83-1464

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

NO. _____

in the Supreme Court of the United States

October Term, 1983

Frances W. West,

Petitioner

vs.

The National Trust Company, as personal representative of the Estate of Albert C. West, deceased, and as Trustee for Elizabeth C. West, under Article V of the Will of Alfred C. West,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Attorneys for Petitioner

QUESTIONS PRESENTED

1. A CLAIM WAS TIMELY PRESENTED TO THE PROBATE COURT OF COLLIER COUNTY, FLORIDA BY PETITIONER HEREIN FOR THE MONTHLY PAYMENT OF $300.00 UNDER THE TERMS OF A PROPERTY SETTLEMENT AGREEMENT INCORPORATED IN A DIVORCE DECREE ENTERED ENTERED IN THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS AGAINST ALFRED C. WEST, NOW DECEASED AND REPRESENTED BY THE NATIONAL TRUST COMPANY. THE CLAIM INCORPORATED THE DECREE (INCLUDING THE PROPERTY SETTLEMENT AGREEMENT) OF THE ILLINOS COURT ENTERED OCTOBER 16, 1963. THE PROPERTY SETTLEMENT AGREEMENT PROVIDED THAT THE MONTHLY SUM (DESCRIBED AS "ALIMONY AND SUPPORT") SHALL BE PAID UNTIL THE FIRST OF THE FOLLOWING EVENTS SHALL OCCUR: (1) FRANCES' REMARRIAGE AND (2) THE DEATH OF FRANCES. NEITHER SUCH EVENT HAS OCCURRED. THE AGREEMENT ALSO PROVIDED THAT ALFRED PAY THE PREMIUMS AND MAINTAIN A GROUP LIFE POLICY NAMING FRANCES IRREVOCABLE BENEFIARY SO LONG AS SUCH SUPPORT PAYMENTS ARE DUE UNDER TERMS OF THE AGREEMENT. ALFRED LATER LEFT HIS THEN EMPLOYMENT AND THUS THE GROUP POLICY WAS NO LONGER EFFECTIVE AND, IN SUCH CASE, THE AGREEMENT PROVIDED "THAT ALL AMOUNTS DUE FOR ALIMONY AND SUPPORT DUE FRANCES, UNDER THE TERMS OF THIS AGREEMENT, SHALL BECOME A LIEN AGAINST ALFRED'S ESTATE."

SECTION 733.705(3) FLORIDA STATUTES PROVIDES THAT CLAIMANT FILE AN INDEPENDENT ACTION ON THE CLAIM WITHIN 30 DAYS AFTER THE FILING OF AN OBJECTION TO THE CLAIM. NO SUCH ACTION WAS FILED UNTIL SUBSEQUENT TO THE LOWER COURT'S RULING AS TO THE 30 DAY LIMITATION. SECTION 95.11 FLORIDA STATUTES PROVIDES TIME PERIODS WITHIN WHICH CERTAIN ACTIONS SHALL BE COMMENCED. THUS, 20 YEARS ON AN ACTION ON A JUDGMENT OR DECREE OF A COURT OF RECORD IN THIS STATE [FLORIDA]. UNDER SUBSECTION (2) AN ACTION SHALL BE COMMENCED WITHIN FIVE YEARS IN AN ACTION ON A JUDGMENT . . . OR ANY COURT OF THE UNITED STATES, ANY OTHER STATE OR TERRITORY IN THE UNITED STATES, OR FOREIGN COUNTRY.

THE DECEDENT WAS CURRENT IN HIS PAYMENTS UP TO THE TIME OF HIS DEATH. NATIONAL TRUST HAS NOT PAID A SINGLE DIME ON THE ILLINOIS JUDGMENT.

THE QUESTION THUS PRESENTED IS: DID THE FLORIDA COURTS THAT IS, THE TRIAL COURT, THE DISTRICT COURT OF APPEAL AND THE SUPREME COURT OF FLORIDA ERR IN REFUSING TO GIVE FULL FAITH AND CREDIT TO THE ILLINOIS JUDGMENT AS REQUIRED BY ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION?

2. ON THE FACTS STATED IN 1 PRECEDING, DOES A 30-DAY LIMITATION IN SECTION 733.705(3) FLORIDA STATUTES DENY DUE PROCESS OF LAW CONTRARY TO THE 14th AMENDMENT TO THE CONSTITUTION IN THAT THE PERIOD IS TOO SHORT AS RESPECTS A FOREIGN JUDGMENT?

3. DOES SECTION 733.705(3) FLORIDA STATUTES APPLY TO A JUDGMENT OF A FOREIGN STATE IN VIEW OF SECTION 95.11 FLORIDA STATUTES BEING A SPECIFIC STATUTE DEALING WITH PERFECTING A JUDGMENT ON A FOREIGN JUDGMENT?

4. DOES THE THE DISTRICT COURT OF APPEAL AND THE SUPREME COURT OF FLORIDA BY THE SIMPLE PROCESS OF AFFIRMING THE COURTS BELOW WITHOUT OPINION FORECLOSE REVIEW OF THE CONSTITUTIONAL ISSUE OF FULL FAITH AND CREDIT GUARANTEED BY ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION?

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are Frances W. West, Petitioner, and The National Trust Company as personal representative of the Estate of Alfred C. West, deceased, and as trustee for Elizabeth C. West as described in the caption to this proceeding.

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in the
Supreme Court
of the
United States
October Term, 1983

Frances W. West,

Petitioner

vs.

The National Trust Company, etc.

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

The Petitioner, Frances W. West, respectfully requests that a Writ of Certiorari be issued to review the determination of the Supreme Court of Florida which dismissed the petition for discretionary review of the action of the District Court of Appeal, Second District, affirming without opinion, the judgment of the trial courts in the consolidated cases dismissing the complaint filed in the Circuit Court of Collier County, Florida and also denying Petitioner's request that the court grant an extension within which to file a complaint

on the foreign judgment after the 30-day period of limitation contained in section 733.705(3) Florida Statutes had expired.

The decision of the Supreme Court dismissing the appeal for discretionary review on the ground that it had no jurisdiction because the District Court of Appeal "did not declare invalid a State Statute or a provision of the State Constitution" was entered December 6, 1983 and on December 30, 1983 a motion filed by Petitioner herein was treated as a motion for reinstatement and was denied.

JURISDICTION

The Supreme Court of Florida dismissed the appeal for discretionary review without opinion on December 6, 1983 and on December 30, 1983 denied a motion, treated as a motion for reinstatement. These orders appear in the appendix at pp. 1, 3. The Petitition for a Writ of Certiorari was filed within 90 days of that date. Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 1 of the United States Constitution providing that each State shall give full faith and credit to the judicial proceedings of every other State.

Fourteenth Amendment to the United States Constitution (Due Process Clause).

See Appendix 23.

Florida Statutes:

§733.705(3) providing a 30-day period within which an independent action may be filed after an objection has been filed on a claim in the probate court. App. p. 11.

§95.11 Limitations other than for the recovery of real property.

(1) Within 20 years.—An action on a judgment or decree of a court of record in this State.

(2) Within five years—

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

Article V, Section 3 of the Florida Constitution, subsection (b) Jurisdiction—The Supreme Court:

(1) Shall hear appeals from . . . decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

and,

subsection (b)3 "May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution. . . ."

See appendix p. 12 for text.

CONCISE STATEMENT OF THE CASE

Alfred C. West now deceased and Frances W. West (petitioner herein) both then resident in the State of Illinois were divorced by decree of the Superior Court of Cook County, Illinois (now the Circuit Court of Cook County) entered on or about October 16, 1963. Both parties were present and represented by independent counsel. Prior to the entry of the decree, a property settlement agreement was entered into which became a part of the decree, providing for the payment by Alfred C. West of $300 per month to Mrs. West beginning August 31, 1962, the date of the agreement, and thereafter until the first to occur of (1) Frances W. West's remarriage and (2) the death of Frances W. West. Neither such event has happened. Further, as part of said decree, Mr. West (the deceased) agreed to keep in force a group life insurance policy on his life in the amount of $40,000, and in the event he shall become ineligible to maintain the policy, any amounts due Mrs. West under the agreement shall become a lien on his estate. The monthly support payments were paid regularly by the decedent, the last of such payments being made on July 1, 1981. Mr. West died July 9, 1981.

Mr. West died a resident of Naples, Florida.

A claim for support payments was timely filed in the probate proceedings on July 21, 1981 and an objection to the to the claim was filed November 5, 1981. In Florida, the filing of an "objection" requires only the use of the word "objection" in the form to trigger the running of the 30-day period for the purpose of filing an independent action on the claim under §733.705(3) of the Florida probate code. The estate being administered

is not required to spell out its basis for the objection. On July 24, 1981 counsel for National Trust Company (National), the personal representative of the Estate of Alfred C. West, sent a letter to all children of Mr. West (the sole beneficiaries under his Will) explaining the claim for alimony. On November 20, 1981, a proposed settle was offered requiring Mrs. West's signature. A reply to this was made by counsel for Mrs. West on November 23, 1981. The offer of November 20, 1981 was mailed on November 23, 1981 to Mrs. West at her then address in Palm Springs, California. On January 29, 1982, counsel for National made certain inquiries as to the purport of Mrs. West's claim for support under the property settlement agreement and asserted for the first time, the language of §733.705(3) Florida Statutes and asserted that the claim was barred, but they nevertheless wanted to settle the matter. This was replied to on February 5, 1982 mentioning that the reference to §733.705(3) was inappropriate in view of the many conversations and correspondence on her claim.

On March 2, 1982, a formal offer in compromise of the claim for support was filed in the probate proceedings. An objection to the offer was mailed to the clerk of the probate division of the Circuit Court on March 10, 1982 together with notice to all interested parties. On May 7, 1982 without any discussion with counsel for Mrs. West, the offer in compromise was withdrawn and on June 28, 1982 an order was entered by the Probate Division of the Circuit Court approving the withdrawal. No mention was made that a hearing was set for June 21, 1982 on the pleadings relating to the offer. Before the order of June 28, 1982 was signed, counsel for Mrs. West was informed of the order of withdrawal and suit

was filed on the Illinois judgment on June 21, 1982. This action was dismissed with prejudice on September 30, 1982 because not filed within 30 days of the filing of an objection to the claim. Appendix 5 In Mrs. West's reply to the motion to dismiss the complaint, the opening paragraph of the Reply made appropriate reference to the constitutional argument that the Illinois judgment was entitled to the full faith and credit under Article IV, Section of the United States Constitution, citing *Morris v. Jones*, Director of Insurance of Illinois 349 U.S.545, 67 S.Ct.451 (1947). App. 9 Subsequently a petition to extend the time for filing an independent action against the estate was filed in the Circuit Court for Collier County, Florida and denied on January 6, 1983. Appendix 7 At no time did the trial court even discuss the application of the full faith and credit clause of the United States Constitution. Also, at no time in the consolidated appeals, that is, the dismissal of the independent action and the court's refusal to grant an extension of time within which to file and independent action on the Illnois judgment, did the trial courts or the District Court of Appeal or the Supreme Court of Florida consider the Constitutional question raised in the trial court and, of course, raised in each of the appeals. Although the District Court of Appeal permitted the issue of the applicability of §95.11 Florida Statutes (App. p. 12) to be raised, neither the District Court of Appeal nor the Supreme Court of Florida considered the section in these appeals, contenting themselves first, in the District Court of Appeals by affirming, without opinion, the order of the Circuit Court in the probate proceedings dismissing Mrs. West's claim for failure to file an independent action on the foreign judgment within the 30-day limitation of §733.705(3), and secondly, the judgment of the Circuit Court denying

Petitioner's petition for an extension of time within which to file an independent action on the foreign judgment, and then in the Supreme Court of Florida in dismissing the application for discretionary review for lack of jurisdiction, also without opinion. App. 1.

REASONS FOR GRANTING THE WRIT

It seems utterly incongruous to require one to file an action on a judgment already rendered to prove a claim in an estate proceeding, especially where there can be no collateral attack on the judgment or to which the estate could not possibly have an objection—the parties having participated in the Illinois proceedings resulting in the decree and the property settlement agreement made part of the decree, and the court having general jurisdiction over the subject matter.

As stated in *Morris v. Jones*, 329 U.S.545, 554, 67 S.CT. 451,457 (1947),

> "The single point of our decision is that the nature and amount of petitioner's claim has been conclusively determined by the Missouri judgment and may not be relitigated in the Illinois proceedings, it not appearing that the Missouri court lacked jurisdiction over either the parties or the subject matter."

There the liquidator as did the probate court in this proceeding declined to recognize the claim based upon the Missouri judgment (here the Illinois judgment) maintaining that the Missouri creditor (the Illinois creditor) must prove his claim on its merits, precisely as did local creditors. This requirement that a creditor prove his claim once an "objection" is filed, by an independent

action must to be sensibly construed, apply to a claim not based on an already existing judgment. In this case, Mr. West was current in his payments (some call it "alimony," but it really is a payment under the property settlement agreement. Eight days after the last payment he died. There was no occasion to file the foreign judgment in Florida under the "Registration of Foreign Support Orders" §88.321, .345, .351 and .371 Florida Statutes (App. 14) as he was current in his payments and there was no indication that he was about to die or that National as his executor (called "personal representative" in Florida) would totally ignore the foreign decree of which it had full knowledge, there being no problem of finances as the inventory in the estate indicated it had a value of $1,000,000 or more. Mrs. West's claim was peanuts in any valuation of the estate. Thus, National's harrassment in this case in any historical review of the case is difficult to understand. *Aldrich v. Aldrich et al*, 378 U.S. 540 (1964).

As respects the limitation in §733.705(3) of the Florida probate code of thirty days to file an independent action on the claim, this Court in the *Morris v. Jones* case, *supra*, observed:

> "It is no more important that the suit on the underlying claim could not be maintained in Illinois after the liquidator had been appointed than the fact that a statute of limitations of the State of the forum might have barred it." Citing *Christmas v. Russell*, 5 Wall. 290, 18 L.Ed.475; *Roche v. McDonald*, 275 U.S.449, 48 S.Ct.142, 77L.Ed.365, 53 A.L.R. 1141.

In *Krestaff v. Krestaff*, 79 Ill.App.2d 170 (1967) a Nevada divorce decree which made no provision for

alimony and did not reserve jurisdiction for later consideration of this question must be given full faith and credit under the United States Constitution Article IV, section 1 and does not authorize the Illinois court to modify the Nevada decree and award alimony. The finality and effect of the Nevada decree are determined by the law of Nevada. And, in Illinois the Illinois Appellate Court upheld the trial court's refusal to permit a foreign judgment debtor to assert defenses to the foreign judgment in Illinois: *Southern Bell Telephone & Telegraph Co. v. Woodstock, Inc.* 34 Ill.App.3d 86 (1975). In *Winland v. Winland*, 416 So.2d 520 (District Court of Appeal—Second District) 1982, an Ohio 1972 support order was barred by Florida's statute of limitations or laches, but a 1981 Ohio order for arrearages based on the 1972 order was not barred and must be given full faith and credit under the U.S. Constitution.

In a case somewhat similar to the present proceeding, a suit was filed to enforce a contract for the redemption of stock. The complaint was dismissed because it did not allege compliance with the probate claims statute. On appeal, the Florida District Court of Appeal, Fourth District reversed, holding that an allegation of compliance with the probate claims statute was not necessary and further, the cause of action set out in the complaint did not appear to come within the purview of the probate claim statute of Florida. *Lewis Marine Supply, Inc. v. Hurt*, 357 So.2d 252 (District Court of Appeal, Fourth District) 1978. In the present situtation, Petitioner here has filed a separate action in the Federal District Court, Southern District of Florida at Miami. Florida in docket No.82-2087 CIV-ALH to enforce the lien against the estate of Mr. West and his children as sole heirs of his estate. All amounts due under the property settlement

agreement are a lien against the estate of Mr. West. Concise Statement of the Case, herein at page 4. Numerous defenses to this claim have been raised including defenses to the merits of the judgment in Illinois. These are now pending on cross motions for summary judgment. We submit that a proceeding to enforce the lien is not within the purview of the probate code of Florida. So, also, as held by this Court in *Union National Bank v Lamb*, 337 U.S.38 (1949) where a Colorado judgment obtained in 1927 was revived in 1945. Suit was then brought in Missouri on the revived judgment in Colorado. The Supreme Court of Missouri though asssuming the judgment was valid in Colorado, refused to enforce it because the original judgment under Missouri's law could not have been revived in 1945. The Missouri Supreme held that the *lex fori* governs the limitations of actions and that the Full Faith and Credit Clause of the Constitution, Article IV, Section 1, did not require Missouri to recognize Colorado's more lenient policy of revival of Judgments. This Court held that *Roche v McDonald*, 275 U.S.449 (1928) was dispositive of the case stating that,

> ". . . once the court of the sister State had jurisdiction over the parties and of the subject matter its judgment was valid and could not be impeached in the State of the forum, even though it could not have been obtained there."

The fact that Florida judgments have a twenty-year period of limitation for their effectiveness under §95.11 Florida Statutes (App. 12) as against a five-year period for foreign judgments does not present an unconstitutional discrimination: *Watkins v Conway*, 385 U.S. 189. However, a period of limitations within

which an action on a foreign judgment may be commenced must be reasonable: *Bosich v. Skermetti et al*, (Miss. S.Ct. 1927) 112 So.385. Apart from the argument that the 30-day limitation of §733.705(3) Florida Statutes does not apply in this case in view of *Morris v. Jones*, supra, and *Lewis Marine Supply, Inc. v. Hurt*, supra, a 30-day limitation is patently too short in the case of a foreign judgment when applied in a probate proceeding. It contravenes the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Finally, we inquire—How can the State of Florida foreclose a constitutional question simply because the trial court, the District Court of Appeal and finally the Supreme Court of Florida do not directly pass upon the constitutional question raised at the outset of the case at the earliest possible moment of time in the proceedings?

The Florida Constitution, Article 5, Section 3(b)(1) provides in part for the jurisdiction of the Supreme Court and states that the Supreme Court: "Shall hear appeals from . . . decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

"2 . . .

"3 May review any decision of a district court of appeal that expressly construes a provision of the state or federal constitution, or . . ." Appendix page 18.

Rule 9.030 Rules of Appellate Procedure, confirms these constitutional provisions. Appendix p. 20.

The decisions of the trial courts in the consolidated cases on appeal to the District Court of Appeals necessarily held, without so deciding, the Constitutionality of §733.705(3) and the applicablity of Article IV, section 1 of the United States Constitution. This, it may have determined was without merit, or perhaps they just didn't want to put it in writing.

In *Department of Administration et al v. Mallory A. Horne et al*, Supreme Court of Florida, 269 So.2d 659 (1972) that Court held that where a trial court necessarily passed directly upon the validity of a state statute, an appeal would lie directly to the Supreme Court of Florida. So also held in *United Yacht Brokers, Inc. v. Gillespie* (DCA 4) 353 So.2d 574 (1977).

The District Court of Appeal for the Second District in *Mackenzie v. Hillsborough County*, 280 So.2d 694 (1973) held that where constitutional questions were involved, the cause would be transferred to the Supreme Court. A motion to this effect was filed in the Florida Supreme Court was denied, also without opinion. Appendix 2.

In *Buchman v. State Board of Accountancy*, (S.Ct.Fla 1972) 262 Fla. 198, the Court held that were the District Court necessarily determined that assertion of unconstitutionality was without merit, it effectively passed upon the constitutionality of the state statute so as to provide jurisdiction in this Court [the Florida Supreme Court].

In *Picchione v. Asti*, (DCA Third 1978) 354 So.2d 954, the Court held that had plaintiff raised question as to constitutionality of limitations statute on presentation

of claims against decedent's estate, proper appeal would have been to Supreme Court rather than District Court of Appeal. Admittedly, these cases construe the constitution of Florida before its amendment in 1980 as set forth above. However, the decisions are quite apposite in the light of the present constitutional provisions about "expressly declares" and "expressly construes."

CONCLUSION

It apparently is the policy of Florida to require claimants to prove their claims in independent actions in the circuit court (not in the probate court) and not to accept the judgments of sister States as an adjudication of the existence and amount of such judgment. This is evidenced by counsel for National during the course of the constitutional question raised in his interposition of defenses to the merits of the judgment, as by asserting that the judgment did not survive the decedent's life, or that alimony terminated on his death. Such a policy, when applied to sister state judgments, is, we submit, in direct conflict with the federal Constitution, Article IV, Section 1, and the decisions of this Court.

The question involved in this case is substantial, involving as it does the rights of Petitioner to the financial protection which the 1963 judgment afforded her and the intention of the decedent to protect her in the event of his death by the property settlement agreement. These rights were callously disregarded by National, indeed contemptuous of her rights. The principles here asserted are far reaching and of great importance and interest all over the United States and will decide a question that is bound to arise again and is bound to come sooner or later before the Supreme Court of the United States.

Thus, for the reasons set forth, the Petitioner prays this Court issue the Writ of Certiorari.

Respectfully submitted,

Peter B. Atwood
Atwood and Richmond
1994 Thatch Palm Drive
Boca Raton, Florida 33432
Attorneys for Petitioner

March, 1984

Appendix

IN THE SUPREME COURT OF FLORIDA

TUESDAY, DECEMBER 6, 1983

CASE NO. 64,587

District Court of Appeal,
2d District — Nos. 82-2432
83-44

FRANCES W. WEST,

Appellant,

vs.

THE NATIONAL TRUST COMPANY, ETC.,

Appellee.

It appearing to the Court that the District Court of Appeal, Second District, did not declare *invalid* a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion *filed* within fifteen (15)

days from the data of this order. See Article V, Section 3(b) (I), Florida Constitution.

C

cc: Hon. William A. Haddad, Clerk
Hon. William J. Reagan, Clerk
Hon. William J. Nelson, Judge
Hon. Charles T. Carlton, Judge

Peter B. Atwood, Esquire
Thomas B. Garlick, Esquire
of Harter, Secrest & Emery

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ Debbie Causseaux
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

FRIDAY, DECEMBER 30, 1983

CASE NO. 64,587

District Court of Appeal,
2d District – Nos. 82-2432
83-44

FRANCES W. WEST,

Appellant,

vs.

THE NATIONAL TRUST COMPANY, ETC.,

Appellee.

On consideration of the Motion to consider appeal to District Court of Appeal as improvidently filed and to transfer cause from District Court Appeal, Second District, to the Supreme Court of Florida, and the response thereto,

IT IS ORDERED by the Court that said motion is treated as a motion for reinstatement and is hereby denied.

C

cc: Hon. William A. Haddad, Clerk
Hon. William J. Reagan, Clerk
Hon. William J. Nelson, Judge
Hon. Charles T. Carlton, Judge

Peter B. Atwood, Esquire
Thomas B. Garlick, Esquire
and Timothy R. Parry, Esquire
of Harter, Secrest & Emery

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ Debbie Causseaux
Deputy Clerk

[Filed 10-12, 1982]

IN THE CIRCUIT COURT OF THE TWENTIETH
JUDICIAL CIRCUIT
COLLIER COUNTY, FLORIDA

CIVIL ACTION

CASE NO. 82-1172-CA-01

FRANCES W. WEST

Plaintiff

vs.

THE NATIONAL TRUST COMPANY as Personal Representative of the Estate of Alfred C. West, Deceased and Trustee for Elizabeth Carpenter West under Article V of the Will of Alfred C. West, Deceased

Defendant

ORDER AND JUDGMENT DISMISSING COMPLAINT WITH PREJUDICE

This cause came on to be heard on September 13, 1982, on the motion of the Defendant to dismiss the complaint of the Plaintiff, with prejudice, upon the ground that the Plaintiff has failed to comply with the limitation of time provided for the commencement of this action pursuant to Florida Statute 733.705, and the Court having read the Motion to Dismiss of the Defendant and the Affadavit and Exhibits annexed thereto, and the Reply to Defendant's Motion submitted by the

Plaintiff, and the Exhibit annexed thereto, and having heard arguments of counsel, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED, that the motion of the Defendant be and it is hereby granted, and it is further

ORDERED AND ADJUDGED, that the Complaint of the Plaintiff be and it is hereby dismissed, with prejudice.

DONE AND ORDERED, in Chambers at Naples, Collier County, Florida, this 30 day of Sept., 1982.

/s/ William J. Nelson
HONORABLE WILLIAM J. NELSON
CIRCUIT JUDGE

[FILED JAN 6 '83]

IN THE CIRCUIT COURT FOR
COLLIER COUNTY, FLORIDA

PROBATE DIVISION

CASE NO. 81-341-CP-02-CTC

IN RE:

ESTATE OF ALFRED C. WEST

ORDER

This cause came on to be heard on December 28, 1982 on the Petition of Frances W. West, Claimant, for an Order extending her time to file suit on two claims against the Estate of Alfred C. West which were first filed on July 21, 1981, and timely objected to by the Personal Representative on November 5, 1981. The Court having read the Petition of Frances W. West and the Answer to Petition of The National Trust Company, as Personal Representative of the Estate of Alfred C. West, and having heard arguments of counsel, and being otherwise fully advised, it is

ORDERED AND ADJUDGED, that Frances W. West, Claimant, has failed to show "good cause" for an extension of time to file suit under Florida Statute 733.705, and it is further

ORDERED AND ADJUDGED, that the Petition of Frances W. West be, and it is hereby, denied in all respects.

DONE AND ORDERED, at Naples, Collier County, Florida this 6th day of January, 1983.

/s/ Charles T. Carlton
HON. CHARLES T. CARLTON
Circuit Judge

cc: Peter B. Atwood, Esq.
William H. Myers, Esq.
Joseph Harrison, Esq.
Thomas B. Garlick, Esq.

IN THE CIRCUIT COURT OF
THE TWENTIETH JUDICIAL CIRCUIT
COLLIER COUNTY, FLORIDA

Civil Action

Case No. 82-1172-CA-01

FRANCES W. WEST

Plaintiff

vs

THE NATIONAL TRUST COMPANY, as Personal Representative of the Estate of Alfred C. West, Deceased and as Trustee for Elizabeth Carpenter West under Article V of the Will of Alfred C. West, Deceased

Defendant

Reply to Defendant's Motion to Dismiss Complaint.

General:

The Claim to which the Estate of Alfred C. West (the Estate) has asked this Court to dismiss is based upon an order of of the Circuit Court of Cook County, Illinois in divorce proceedings. This decree, made a part of the Complaint herein is entitled to the full faith and credit of this Court under Article IV, section 1 of the Constitution of the United States. The judgment as obtained in 1963, and, as stated in *Morris v. James*,

Director of Insurance of Illinois (1947) 329 U.S. 545, 67 S.Ct. 451, 456,

". . . That determination is final and conclusive in in all courts. 'Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment." (Citing cases)

"For the Full Faith and Credit Clause established 'throughout the federal system and salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered". Id., 320 U.S. at page 439, 64 S.Ct. at page 214, 88 L.Ed.149, 150A.L.R. 413. And see Riley v. New York Trust Co., 315 U.S. 343, 348, 349, 62 S.Ct. 608, 612, 86 L.Ed.885. The nature and amount of petitioner's claim may not, therefore, be challenged or retried in the Illinois proceedings."

". . . In any event the Missouri judgment is res judicata as to the nature and amount of petitioner's claim as against all defenses which could have been raised." (Citing cases)

* * *

Florida Statutes:

733.705 Payment of and objection to claims

(1) No personal representative shall be compelled to pay the debts of the decedent until after the expiration of 4 months from the first publication of notice of administration. If any person brings an action against a personal representative within the 4 months on any claim to which the personal representative has filed no objection, the plaintiff shall not receive any costs or attorneys' fees if he prevails, nor shall the judgment change the class of the claim for payment under this code.

(2) On or before the expiration of 4 months from the first publication of notice of administration, a personal representative or other interested person may file a written objection to any claim. An objection filed to an unmatured claim matures it for the purpose of bringing an action on it. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant as shown on the claim or delivery to the claimant to whose claim he objects or [the claimant's] attorney of record, if any, not later than 10 days after it has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. Failure to serve a copy of the objection constitutes an abandonment of the objection.

(3) The claimant shall be limited to 30 days from the date of service of an objection within which to bring an independent action upon the claim. For good cause, the court may extend the time for filing an

objection to any claim or the time for serving the objection, and may likewise extend the time for filing an action or proceeding after objection is filed. The extension of time shall be granted only after notice. No action or proceeding shall be brought against the personal representative after the time limited above. If an objection is filed to the claim of any creditor and an action is brought by the creditor to establish his claim, a judgment establishing the claim shall give it no priority over claims of the same class to which it belongs.

(4) No interest shall be paid by the personal representative or allowed by the court on a claim until the expiration of 4 calendar months from the first publication of the notice of administration unless the claim is founded on a written obligation of the decedent providing for the payment of interest. Interest shall be paid by the personal representative on written obligations of the decedent providing for the payment of interest. On all other claims, interest shall be allowed and paid beginning 4 months from the first publication of the notice of administration.

(5) The court may determine all issues concerning claims or matters not requiring trial by jury.

* * *

95.11 Limitations other than for the recovery of real property

Actions other than for recovery of real property shall be commenced as follows:

(1) Within twenty years.—An action on a judgment or decree of a court of record in this state.

(2) Within five years.—

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument.

(c) An action to foreclose a mortgage.

(3) Within four years.—

(a) An action founded on negligence.

(b) An action relating to the determination of paternity.

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 15 years

after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his employer, whichever date is latest.

(d) An action to recover public money or property held by a public officer or employee, or former public officer or employee, and obtained during, or as a result of, his public office or employment.

(e) An action for injury to a person founded on the design, manufacture, distribution, or sale of personal property that is

* * *

PART IV. REGISTRATION OF FOREIGN SUPPORT ORDERS

88.321 Additional remedies

1. In general

A Uniform Reciprocal Enforcement of Support Act order rendered pursuant to this chapter is not the exclusive means in which outstanding child support payments may be collected. Op.Atty.Gen., 077-77, July 26, 1977.

88.345 Official to represent petitioner

If this state is acting either as a rendering or a registering state, the prosecuting attorney upon the request of the court or the Department of Health and Rehabilitative Services shall represent the petitioner in proceedings under this part.

Added by Laws 1979, c. 79-383, § 36, eff. Oct. 1, 1979.

88.351 Registration procedure; notice

(1) A petitioner seeking to register a foreign support order in a circuit court of this state shall transmit to the clerk of the circuit court:

(a) Three certified copies of the order with all modifications thereof;

(b) One copy of the reciprocal enforcement of support act of the state in which the order was made; and

(c) A statement, verified and signed by the petitioner, showing the post office address of the petitioner, the last known place of residence and post office address of the respondent, the amount of support remaining unpaid, a description and the location of any property of the respondent available upon execution, and a list of the states in which the order is registered.

88.371 Effect of registration; enforcement procedure

(1) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The respondent has 25 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the respondent may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment and matters concerning a substantial change in the circumstances for the parties relating to the obligation of support. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the respondent has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the respondent furnishes the same security for payment of the support ordered that is required for a support order of this state.

Amended by Laws 1979, c. 79-383, § 38, eff. Oct. 1, 1979.

Laws 1979, c. 79-383, amended chapter 88 to conform the 1955 Uniform Reciprocal Enforcement of Support Act to the 1968 revised act.

Florida Constitution Article V.

SECTION 3. Supreme court.—

(a) ORGANIZATION.—The supreme court shall consist of seven justices. Of the seven justices, each appellate district shall have at least one justice elected or appointed from the district to the supreme court who is a resident of the district at the time of his original appointment or election. Five justices shall constitute a quorum. The concurrence of four justices shall be necessary to a decision. When recusals for cause would prohibit the court from convening because of the requirements of this section, judges assigned to temporary duty may be substituted for justices.

(b) JURISDICTION.—The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and

directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

Rules of Appellate Procedure

Rule 9.030. Jurisdiction of Courts

(a) Jurisdiction of Supreme Court.

(1) ***Appeal Jurisdiction.***

(A) The Supreme Court shall review, by appeal:

(i) final orders of courts imposing sentences of death;

(ii) decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(B) When provided by general law, the Supreme Court shall review:

(i) by appeal final orders entered in proceedings for the validation of bonds or certificates of indebtedness;

(ii) action of statewide agencies relating to rates or service of utilities providing electric, gas or telephone service.

(2) ***Discretionary Jurisdiction.*** **The discretionary jurisdiction of the Supreme Court may be sought to review:**

(A) decisions of district courts of appeal that:

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;

(v) pass upon a question certified to be of great public importance;

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the Supreme Curt, and:

(i) to be of great public importance, or

(ii) to have a great effect on the proper administration of justice;

(C) questions of law certified by the Supreme Court of the United States of a United States Court of Appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.

(3) *Original Jurisdiction.* The Supreme Court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction;

and may issue writs of mandamus and quo warranto to state officers and state agencies. The Supreme Court or any justice may issue writs of habeas corpus returnable before the Supreme Court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(b) Jurisdiction of District Courts of Appeal.

(1) *Appeal Jurisdiction.* District courts of appeal shall review, by appeal:

(A) final orders of trial courts not directly reviewable by the Supreme Court or a circuit court;

(B) non-final orders of circuit courts as prescribed by Rule 9.130(a)(3);

(C) administrative action when provided by general law.

(2) *Certiorari Jurisdiction.* The certiorari jurisdiction of district courts of appeal may be sought to review:

(A) non-final orders of lower tribunals other than as prescribed by Rule 9.130;

(B) final orders of circuit courts acting in their review capacity.

(3) *Original Jurisdiction.* District courts of appeal may issue writs of mandamus, prohibition, quo warranto, common law certiorari and all writs necessary to the complete exercise of the courts; jurisdiction; or any

judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof, or before any circuit judge within the territorial jurisdiction of the court.

* * *

Constitution of the United States:

ARTICLE IV—STATES—RECIPROCAL RELATIONSHIP BETWEEN STATES AND WITH UNITED STATES

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Amend. 14

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 28 U.S.C.

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

1. . . .

2. . . .

3. By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.